

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

Kevin Brathwaite,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1542-GMS
)	
Thomas Carroll, Warden, et al.,)	
)	
Defendants.)	

**STATE DEFENDANT VIOLET DUNN'S
ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendant Violet Dunn, by and through undersigned counsel, hereby answers the Plaintiff's Second Amended Complaint as follows:¹

1. Admitted that Plaintiff filed his original complaint on or about December 23, 2004 .
2. Admitted that Plaintiff amended his original complaint to include defendant Violet Dunn on or about March 21, 2005.
3. Admitted that defendant Violet Dunn was served with the amended complaint on November 4, 2005.
4. Admitted that the Court issued an Order dismissing plaintiff's claims alleging a respondeat superior theory against defendant Dunn. However, the Court permitted the Plaintiff "to amend his claim to allege with more particularity the incident that occurred on December 15, 2004, and the correctional officers allegedly involved in the incident."
5. Denied that defendant Dunn violated the Plaintiff's constitutional right to be free

¹ Defendant Dunn responds to the Plaintiff's unnumbered allegations as they appear in his Second Amended Complaint and subsequently assigned numbers to the responses.

from cruel and unusual punishment.

6. Denied that defendant Dunn assaulted the plaintiff with a dangerous weapon .

7. Denied that defendant Dunn prevented Plaintiff from filing an inmate grievance.

RELIEF SOUGHT

1. Denied that Plaintiff is entitled to compensatory and/or punitive damages.

2. Denied that Plaintiff is entitled to any other relief.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

2. Defendant Dunn is immune from liability under the Eleventh Amendment.

3. Defendant Dunn is entitled to qualified immunity.

4. As to any claims under state law, Defendant is entitled to immunity under the State Torts Claims Act, 10 *Del. C.* § 4001 *et seq.*

5. As to claims under state law, Defendant is entitled to sovereign immunity in her official capacity.

6. Plaintiff's Complaint, to the extent that it seeks punitive damages, fails to state a cause of action supporting the punitive damages claim.

Wherefore, Defendant Dunn demands that judgment be entered in her favor as to all claims and against the plaintiff as to all claims, and attorney's fees and costs be awarded to defendant.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters

Ophelia M. Waters, ID# 3879
Deputy Attorney General
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801
302-577-8400
ophelia.waters@state.de.us

Attorney for State Defendant Dunn

Dated: May 10, 2006

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2006, I electronically filed *State Defendant Violet Dunn's Answer to Plaintiff's Second Amended Complaint*, with the Clerk of Court using CM/ECF. I hereby certify that on May 10, 2006, I have mailed by United States Postal Service, two copies of the document to the following non-registered participant: Kevin Braithwaite.; SBI #315294; Delaware Correctional Center; 1181 Paddock Road; Smyrna, DE 19977.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Ophelia M. Waters
Ophelia M. Waters
Deputy Attorney General
820 North French Street, 6th Floor
Wilmington, Delaware 19801
(302)577-8400
ophelia.waters@state.de.us